

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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THOMAS G. HETZEL,

DOCKET NOS. 10-I-236,  
10-I-237 AND 10-H-238-SC

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

These cases come before the Commission on the motion of the Respondent, the Wisconsin Department of Revenue (the "Department"), for summary judgment. Petitioner Thomas G. Hetzel appears *pro se* in all three cases. Attorney Julie A. Zimmer represents the Department and has filed a brief in support of Respondent's motion for summary judgment, together with an affidavit and exhibits numbered 1 through 13 in support of the motion. The Petitioner did not file a response to the motion. Docket No. 10-I-236 is an income tax case from 2003; Docket No. 10-I-237 is an income tax case from 2004; and Docket No. 10-H-238-SC is a Homestead Credit tax case from 2006.

Having considered the entire record in these matters, the Commission hereby finds, rules and orders as follows:

## FINDINGS OF FACT

1. By a Notice of Estimated Tax Amount Due, dated February 11, 2010, the Department issued an income tax assessment to Petitioner for taxable year 2003 in the amount of \$14,505.17, including interest, penalty and late fee. Affidavit of Attorney Julie A. Lotto ("Zimmer Aff."), ¶ 2, Exh. 1.)

2. By a Notice of Estimated Tax Amount Due, also dated February 11, 2010, the Department issued an income tax assessment to Petitioner for taxable year 2004 in the amount of \$13,360.65, including interest, penalty and late fee. (Zimmer Aff., ¶ 3, Exh. 2.)

3. By letter dated February 18, 2010, date-stamped and received by the Department on March 17, 2010, Petitioner asked the Department for a redetermination of the 2003 and 2004 estimated assessments. (Zimmer Aff., ¶ 4, Exh. 3.)

4. On January 10, 2007, Petitioner filed a 2006 Wisconsin Schedule H-EZ with the Department claiming \$1,160 in Homestead Credit. Petitioner reported \$7,308 of Household income on line 7c. Petitioner's 2006 Homestead Credit claim was granted. (Zimmer Aff., ¶ 5, Exh. 4.)

5. By a Notice of Amount Due, dated February 18, 2010, the Department issued an assessment to Petitioner, billing him back for the Homestead Credit of \$1,160 he received for taxable year 2006. (Zimmer Aff., ¶ 6, Exh. 5.)

6. By letter dated February 22, 2010, date-stamped and received by the Department on March 17, 2010, Petitioner petitioned the Department for a

redetermination of the 2006 Homestead Credit disallowance and assessment. (Zimmer Aff., ¶ 7, Exh. 6.)

7. By three Notices of Action, all dated August 4, 2010, the Department denied Petitioner's Petitions for Redetermination for taxable years 2003, 2004, and 2006. (Zimmer Aff., ¶ 8, Exh. 7.)

8. Petitioner's Petitions for Review were timely received by the Wisconsin Tax Appeals Commission on October 4, 2010 with a certified mail date-stamp of October 2, 2010. Petitioner paid his filing fee with a check from the Thomas G. Hetzel Trading Co. The check lists Petitioner's Wisconsin Driver's License Number and his Wisconsin telephone number. The check lists the address for the Thomas G. Hetzel Trading Co. as 43410 Kilbourn Rd, Box 213, Russell, IL, 60075. (Zimmer Aff., ¶ 9, Exh. 8.)

9. During the 2003 taxable year, the Petitioner received \$88,729 of 1099-B (stocks and bonds) income and \$237 of 1099-INT (interest) income from Scottrade, Inc., doing business as Thomas G. Hetzel Trading Co. The Petitioner also received \$80 of 1099-INT income in his own name from Catholic Knights. In total, the Department is aware of \$89,046 of unreported income received by Petitioner. (Zimmer Aff., ¶ 10, Exh. 9.)

10. During the 2004 taxable year, the Petitioner received \$86,644 of 1099-B (stocks and bonds) income and \$9,870 of 1099-DIV (dividend) income from Scottrade, Inc., doing business as Thomas G. Hetzel Trading Co. The Petitioner also received \$1,200 of W-2G income (lottery winnings) from the Wisconsin Lottery and \$80

of 1099-INT (interest) income in his own name from Catholic Knights. In total, the Department is aware of \$97,794 in unreported income received by Petitioner. (Zimmer Aff., ¶ 11, Exh. 10.)

11. During the 2006 taxable year, the Petitioner received \$35,397 of 1099-B (stocks and bonds) income and \$4,446 of 1099-DIV (dividend) income from Scottrade, Inc., doing business as Thomas G. Hetzel Trading Co. The Petitioner also received \$7,308 of 1099-SSA (social security) income and \$165 of 1099-INT (interest) income in his own name from Catholic Knights, JP Morgan Chase Bank, and Bank of Kenosha. In total, the Department is aware of \$40,008 in unreported income received by Petitioner. Petitioner reported the \$7,308 on his 2006 Schedule H-EZ. (Zimmer Aff., ¶ 12, Exh. 11.)

12. The addresses listed for Petitioner doing business as the Thomas G. Hetzel Trading Co. on his 2003 and 2004 1099-B's from Scottrade, Inc. was 43410 N. Kilbourne Rd, Apt. 213, Russell, IL, 60075. The addresses listed for Petitioner doing business as the Thomas G. Hetzel Trading Co. on his 2006 1099-B's from Scottrade, Inc. was P.O. Box 213, Russell, IL, 60075. (Zimmer Aff., ¶ 13, Exhibits 9-11.)

13. The address of the U.S. Post Office in Russell, IL, listed on the United States Postal Service website accessed by the affiant, is 43410 N. Kilbourne Rd., Russell, IL, 60075. According to Google Maps accessed by the Department of Revenue online, the location of the Russell, IL Post Office is directly across the Wisconsin-Illinois border from Kenosha, WI. (Zimmer Aff., ¶ 14, Exh. 12.)

14. The address listed for Petitioner on his 2003 1099-INT's from Catholic Knights was P.O. Box 321, Racine, WI, 53403. (Zimmer Aff., ¶ 15, Exh. 9.)

15. The Petitioner initiated a lawsuit in Kenosha County Circuit Court on October 16, 2003. The Wisconsin Circuit Court Access records accessed online by the Department of Revenue indicated the Petitioner's address as 1130 Carlisle St., #102, Racine, Wisconsin, 53404. (Zimmer Aff., ¶ 16, Exh. 13.)

16. The address listed for Petitioner on his 2004 1099-INT's from Catholic Knights was 4420 53<sup>rd</sup> St., Kenosha, WI, 53144, which is Petitioner's current address on file with the Tax Appeals Commission. (Zimmer Aff., ¶ 17, Exh. 10.)

17. The Recipient's Identification Number listed for Thomas G. Hetzel Trading Co., A Sole Proprietorship, on Petitioner's 1099-B's is the same number listed for Thomas G. Hetzel himself - Petitioner's Social Security Number. It is also the same number that Petitioner listed as his Social Security Number on his 2006 Wisconsin Schedule H-EZ. (Zimmer Aff., ¶ 18, Exhibits 9-11 and 4.)

18. The Petitioner failed to file Wisconsin income tax returns for taxable years 2003, 2004, and 2006. (Zimmer Aff., ¶ 19.)

### **RULING AND DECISION**

For the years 2003 and 2004, Petitioner failed to file a state income tax return and consequently, the Department issued two estimated tax assessments for those years. In 2006, Petitioner filed a Homestead Tax return, claiming \$1,160 in Homestead Credit. After the Department found that Petitioner had underreported his 2006 income, it issued an assessment to recover the \$1,160 credit Petitioner had

received. Petitioner appealed all three of these assessments.

Under Wis. Stat. § 802.08(2), a summary judgment shall be granted if the pleadings, depositions, answers to interrogatories and admissions on file together with affidavits, if any, show that there is no genuine issue as to any material fact. A party moving for summary judgment has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. *Kraemer Bros., Inc. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 565, 278 N.W.2d 857 (1979). Once a prima facie case is established, “the party in opposition to the motion may not rest upon the mere allegations or denials of the pleadings, but must, by affidavits or other statutory means, set forth specific facts showing that there exists a genuine issue requiring a trial.” *Board of Regents v. Mussallem*, 94 Wis. 2d 657, 673, 289 N.W.2d 801 (1980). Where the party opposing summary judgment fails to respond or raise an issue of material fact, the trial court is authorized to grant summary judgment. *Board of Regents*, 94 Wis. 2d at 673-74.

With respect to the two income tax cases (Docket Nos. 10-I-236 and 10-I-237), Respondent established that Petitioner lived in Racine, Wisconsin in 2003 (Exhibits 9 and 13) and lived in Kenosha, Wisconsin in 2004 (Exhibit 10). During those tax years, Petitioner failed to report at least \$89,046 of income in 2003 and at least \$97,794 of income in 2004 (Exhibits 9 and 10). Under Wis. Stat. § 71.02, income tax is assessed on the net incomes of every natural person residing in the state. Every individual who has a gross income at or above a threshold amount which shall be determined annually by the Department is required to file a state income tax return. Wis. Stat. § 71.03(2). The threshold for 2003 and 2004 was \$9,000. Wis. Stat. § 71.74(3) allows the Department to

issue an estimated assessment of any person who fails to file an income tax return when required. In this case, the Department exercised its power to issue the estimated assessment based upon Petitioner's failure to file income tax returns for 2003 and 2004. (Exhibits 1 and 2.)

Petitioner appealed the assessments on the grounds that the assessments of \$14,505.17 for 2003 and \$13,360.65 for 2004 were incorrect. Assessments by the Department are presumed to be correct and Petitioner must show by clear and satisfactory evidence that they are incorrect. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984). The burden is on the Petitioner to show that the assessments are incorrect. One way for the Petitioner to start would be to file 2003 and 2004 income tax returns with the Department. Instead, Petitioner has failed to do this, and has also failed to file a response brief here.

Because Petitioner was required to file income tax returns for 2003 and 2004 and did not do so, the Department issued estimated assessments for both years under Wis. Stat. § 71.74(3). The Department was properly following the law in doing so. In short, there are no material facts at issue with respect to Docket Nos. 10-I-236 and 10-I-237 and Department's motion for summary judgment in those cases is granted.

With respect to the Homestead Credit case, Docket No. 10-H-238-SC, the Petitioner did not file an Income Tax return, but did file a Schedule H-EZ claiming \$1,160 in Homestead Credit. This Homestead Credit was initially granted by the Department based on the information Petitioner provided. (Exhibit 4.) The Department subsequently found that Petitioner had at least \$40,008 of unreported income for 2006.

(Exhibit 1.) If Petitioner had properly reported his 2006 income on Schedule H-EZ, he would not have received the Homestead Credit. The Department issued an assessment to Petitioner for the \$1,160 he erroneously received as Homestead Credit for 2006. (Exhibit 5.) Petitioner filed an appeal with the Commission.

The Department's assessment in Docket No. 10-H-238-SC was proper. Petitioner had significantly under-reported his income on Line 7c of his Schedule H-EZ. Wis. Stat. § 71.52(5) requires " . . . all income received by all persons of a household in a calendar year while members of the household . . . " be reported to determine whether a person qualifies for Homestead Credit. Wis. Stat. § 71.74(8)(a) gives the Department the power to correct Homestead returns and recover wrongfully paid claims by assessment. This is exactly what the Department did in the case. Petitioner claimed a credit he did not deserve by under-reporting his income. There are no material facts at issue in this case, and the Commission grants summary judgment to Respondent in Docket No. 10-H-238-SC.

### **ORDER**

1. In Docket No. 10-I-236, the Department's motion for summary judgment is granted and the Petition for Review is dismissed.
2. In Docket No. 10-I-237, the Department's motion for summary judgment is granted and the Petition for Review is dismissed.
3. In Docket No. 10-H-238-SC<sup>1</sup>, the Department's motion for summary

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<sup>1</sup> An alternative basis for the Commission's holding is that the Petitioner has failed to prosecute his cases.



judgment is granted and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 23<sup>rd</sup> day of June, 2011.

**WISCONSIN TAX APPEALS COMMISSION**

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Thomas J. McAdams, Acting Chairperson

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Roger W. Le Grand, Commissioner

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**